THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.4218 OF 2006

Dated: 09-03-2006

Between

Premamma, W/o. Late Peter,

R/o. Seetharama Nagar,

Kurnool, Kurnool District

and others.

...PETITIONERS

AND

The Municipal Corporation,

Kurnool, rep. by its Commissioner,

Kurnool, Kurnool District.

...RESPONDENT

ORDER:

Petitioners seek a Writ of Mandamus to declare the action of the respondent in taking steps to dispossess them from their houses at Seetharamnagar without following due process of law as illegal and arbitrary.

Learned counsel for the petitioner submits that petitioners are all labourers working as daily coolies and are residents of Seetharamnagar. He further submits that the Seetharamnagar

Welfare Association, formed by the colony people, filed a suit in O.S.No.516 of 1996 on the file of the II Additional Junior Civil Judge, Kurnool for mandatory injunction directing the Municipal Corporation, Kurnool, represented by its Commissioner, to remove the huts of the defendants 2 to 24 therein, petitioners herein, or in the alternative to remove the same through process of the Court and for permanent injunction restraining the defendants from erecting any huts or making any constructions on the proposed 40' road or road margin site after removal. The said suit was initially dismissed by judgment dated 15.09.1999 against which the said association preferred an appeal in A.S.No.138 of 1999 on the file of the III Additional District Judge, Kurnool and the appellate Court by judgment and decree dated 08.07.2002 allowed the appeal setting aside the judgment and decree of the trial Court dated 15.09.1999 and passed a decree that the plaintiff is entitled for the relief of mandatory injunction against the Municipal Corporation, Kurnool and consequential permanent injunction against the petitioners herein as prayed for and accordingly the suit was decreed. Pursuant to the said decree the said association filed E.P.No.663 of 2005 in O.S.No.516 of 1996 on the file of the Principal Junior Civil Judge, Kurnool to direct the judgment debtor – Municipal Corporation to get the encroachment huts and building structures of the petitioners existing on the EP schedule road and road margin removed. It is stated that the said EP is posted on 21.04.2006.

I am of the opinion that even without any reference to the orders to be passed in the said EP the Municipal Corporation is entitled to implement the order of the Court below. I am also of the opinion that this writ petition filed without impleading the said association is not maintainable and the petitioners having suffered a decree are not entitled for any relief.

The writ petition is accordingly dismissed.

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V. ESWARAIAH, J

March 9, 2006

Note: Furnish C.C. of the order by 10.03.2006

(**B/o**)

DSK